

CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processing company that will accept the additional deliveries, and

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(b) Subject to a transfer of allocation, if any, described in paragraph (a) of this section being completed, CCC will permanently eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding, or

(3) Has permanently terminated operations by:

(i) Not processing sugarcane or sugar beets for 2 consecutive years, or

(ii) Notifying CCC that the processor has permanently terminated operations.

(c) If a purchaser purchasing the assets of another processor is a new entrant or is a processor purchasing all the assets of the selling processor, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history.

(d) If a processor does not purchase all of the assets of another processor, then the purchased factories must operate for the remainder of the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. If the purchased factories do not operate for this required time period, CCC shall reassign the allocation to the other processors on a pro rata basis.

(e) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(f) New entrants, not acquiring existing facilities with production history in the base period, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC:

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing.

(6) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundred-weight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

[69 FR 39813, July 1, 2004, as amended at 69 FR 48765, Aug. 11, 2004; 71 FR 16201, Mar. 31, 2006]

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, from time to time, whether sugar beet or sugarcane

processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

(1) First, to allocations of other sugarcane processors within that State based on each processor's initial allocation share of the State's allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State's initial share of the cane sugar allotment, but no State may receive reassigned State allotment such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

(e) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of

the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (e)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (e)(1) and (e)(2) of this section have been implemented, be reassigned to imports.

(f) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55063, Sept. 13, 2004; 69 FR 58037, Sept. 29, 2004; 70 FR 28181, May 17, 2005]

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under § 1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001,

(B) Obtained an allocation transfer from a predecessor mill, or